

BEFORE LINDA McCULLOCH, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,  
STATE OF MONTANA

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Board of Trustees, Cottonwood	)	
	)	
School District #57,	)	OSPI 303-05
	)	
Appellant,	)	
	)	
V	)	<b>DECISION AND ORDER</b>
	)	
Havre High School District 16A,	)	
	)	
Respondent.	)	

AND

Board of Trustees, Davey	)	
	)	
School District #12,	)	OSPI 304-05
	)	
Appellant,	)	
	)	
V	)	
	)	
Havre School District 16/A,	)	
	)	
Respondent.	)	

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The State Superintendent has determined that the two above noted cases involve virtually the same issues and therefore a joint Decision and Order will be issued.

Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following Decision and Order.

**DECISION AND ORDER**

Appellants' Notices of Appeal dated December 8, 2005 and December 9, 2005 are hereby dismissed for lack of jurisdiction.

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Appellant, Davey School District No. 12, is an elementary district located wholly within Hill County, Montana.

The Havre High School and Elementary School Districts jointly operate bus routes to transport high school and elementary students. High school and elementary students ride on the same buses.

The Hill County Transportation Committee approved these routes.

On September 15, 2005, the Hill County Transportation Committee held a meeting to discuss several route changes, additional routes and the complaints submitted by Cottonwood Elementary and Davey Elementary. The minutes reflect that a motion was made to send a letter to Havre Districts 16/A advising them to discontinue picking up elementary students living in the Cottonwood and Davey Elementary Districts or get an agreement with these districts to allow them to pick up elementary students living in the Cottonwood and Davey Elementary Districts.

1 On September 21, 2005, Garry Pace, Acting Chair of the Hill County Transportation  
2 Committee sent a letter to Denise Thompson, Chair of the District 16/A Board of Trustees  
3 advising her that the Committee had reviewed the law and determined that District 16/A was  
4 operating routes #5, #6 and #11 in violation of the law. Mr. Pace further advised District 16/A  
5 that they had 60 days in which to bring these routes into compliance or request an agreement  
6 from the Cottonwood and Davey Elementary Districts to transport elementary students residing  
7 within those districts

8 On September 27, 2005, Kirk Miller, Superintendent of Havre Districts 16/A sent a letter  
9 to Mr. Pace stating that they were "formally appealing the decision of the County Transportation  
10 Committee described in your letter of September 21, 2005".

11 Mr. Pace scheduled a meeting of the Hill County Transportation Committee for  
12 November 17, 2005 with the only item on the agenda being the Havre School District appeal.

13 At the November 17<sup>th</sup> meeting, Ric Floren, committee member from Havre, presented  
14 several reasons why the September 15<sup>th</sup> meeting was not "legal" and cited laws to support  
15 Havre's claim that routes 2, 5, 6, and 11 were not illegal routes. After discussion the committee  
16 voted to rescind the action taken at the September 15<sup>th</sup> meeting.

17 The Board of Trustees of Cottonwood School District #57 and the Board of Trustees of  
18 Davey School District #12 now appeal the Hill County Transportation Committee's November  
19 17<sup>th</sup> decision.

## 20 ISSUES ON APPEAL

21 The issues on appeal are:

- 22 1. Does the State Superintendent have jurisdiction over the instant appeal?
- 23 2. If jurisdiction exists, can a high school district, operating within its transportation  
24 service area, pick up elementary students who reside in a separate elementary district without an  
25 agreement with the elementary district?

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*Wilson v. Dept. of Public Service Reg.*, 260 Mont. 167, 858 P.2d 368, (1993).

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2. Appellant, Davey Elementary District #12 is located in Hill County, Montana and is located entirely within the boundaries of the Havre High School District #A.

4. The Hill County Transportation Committee held its annual meeting on June 27, 2005 to review and approve bus routes. Havre routes 2, 5, 6, & 11 were approved at this meeting.

6. At the September 15<sup>th</sup> meeting the Hill County Transportation Committee voted to send a letter to Havre Districts 16/A advising them that they were operating routes in violation of current laws and requiring them to bring the routes into compliance or seek an agreement with Cottonwood Elementary and Davey Elementary to transport students residing in their elementary districts to the Havre Elementary District.

8. The Hill County Transportation Committee held a meeting on November 17, 2005 at which the sole agenda item was the Havre appeal.

8. At the November 17, 2005 meeting the Hill County Transportation Committee rescinded their vote made at the September 15<sup>th</sup> meeting.

9. The Cottonwood and Davey School District Boards of Trustees appealed the Hill County Transportation Committee's November 17<sup>th</sup> decision to the State Superintendent of Public Instruction.

**LAW**

ARM 10.6.102 SCHOOL CONTROVERSY MEANS CONTESTED CASE

(1) Contested case means any proceeding in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing.

20-10-132. Duties of county transportation committee (1) It is the duty of the county transportation committee to:

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(d) conduct hearings to establish the facts of transportation controversies that have been appealed from the decision of the trustees and act on the appeals on the basis of the facts established at the hearing;"

## CONCLUSION OF LAW

1. The Hill County Transportation Committee does not have jurisdiction to hear these matters as appeals. Transportation committees have a limited authority to hold a hearing. This authority is limited to "transportation controversies that have been appealed from the decision of the trustees." 20-10-132(1)(d), MCA.

2. There was no decision of a Board of Trustees to be appealed to the County Transportation Committee and therefore no contested cases exist. The County Transportation Committee has no jurisdiction and therefore the State Superintendent also does not have jurisdiction to hear these "appeals."

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Appellants' Notices of Appeal dated December 8<sup>th</sup> and 9<sup>th</sup>, 2005 are hereby dismissed for lack of jurisdiction.

## MEMORANDUM OPINION

A County Transportation Committee only has the authority to conduct hearings on controversies appealed from a decision of a district's board of trustees. All other matters are routine matters acted upon by the committee under its statutory authority and are not appealable to the State Superintendent.

The Hill County Transportation Committee met on three separate occasions to discuss the bus routes in question. The meeting held November 17, 2005 was not a hearing as contemplated by Administrative Rules Title 10, Chapter 6 and no findings of fact, conclusions of law and order were issued as required by law in a contested case. In this case no hearing was held, nor did the County Transportation Committee have legal authority to conduct a hearing.

The County Transportation Committee appropriately handled Havre's "appeal" as a request for reconsideration. Therefore, the State Superintendent does not have jurisdiction to hear the subject appeals.

## MEMORANDUM OF GUIDANCE

The State Superintendent will take this opportunity to provide guidance on the underlying issue presented by the Cottonwood, Davey and Havre Districts because it is one that affects several school districts in the state of Montana.

The issue which is the crux of this matter is whether or not a high school district operating a school bus within its transportation service area, on a route approved by the county transportation committee, can pick up elementary students residing within its high school district and transport them to an elementary district, which is not their resident elementary district, i.e. can Havre High School transport students from the Cottonwood or Davey Elementary Districts to attend school in the Havre Elementary District?

1 MCA 20-10-122(1) provides that "[t]he trustees of any district also may provide school  
2 bus transportation to any pupil of a public school who is not an eligible transportee of the  
3 district: (a) on a school bus conveying eligible transportees when the ineligible transportee will  
4 not displace an eligible transportee from such school bus because of the lack of seating  
5 capacity... ."

6 The Havre High School and Elementary School Districts jointly operate bus routes to  
7 pick up both high school and elementary students. The routes are within the Havre High School  
8 transportation service area, which by definition is the territory of the district. 20-10-126(1),  
9 MCA. There is no provision in Montana law which prohibits a district from providing  
10 transportation to any public school student as long as the district is operating an approved route  
11 within its transportation service area.

12 Section (2) of 20-10-126, MCA which appellants rely on is only applicable in the case of  
13 a bus route being extended to transport pupils from outside its transportation service area. Havre  
14 is not extending its route outside of its transportation service area, nor is it transporting pupils  
15 from outside its transportation service area and therefore no agreement with Cottonwood or  
16 Davey is required.

17 Patricia J. Jordan, Assistant Attorney General came to the same conclusion in the letter of  
18 advice to Brant Light, Cascade County Attorney dated March 10, 1998 regarding a similar issue.

19 Fifth Judicial District Judge Frank Davis came to a different conclusion in *Cardwell v.*  
20 *Harrison*, Cause No. 7631 in 1987. However, 20-10-126, MCA, which defines a transportation  
21 service area as the territory of the district, was not enacted at that time. The State Superintendent  
22 finds this decision is no longer applicable because of the change in the law.

23 Cottonwood and Davey allege that because the buses and transportation services are  
24 partially funded by the Havre Elementary District, they are being operated in violation of the  
25 law. While it is true that a bus operated solely by the Havre Elementary District to pick up only  
elementary children could not enter the Cottonwood District boundaries to pick up elementary

1 students, this is not the present case. As long as these buses are operated by both the Havre High  
2 School District and the Havre Elementary District and pick up both high school and elementary  
3 students and the buses operate on approved routes within the Havre High School District  
4 transportation service area, they are operating within the law. The other option would be for the  
5 Havre Elementary District to send out a bus to pick up only elementary students within the  
6 boundaries of the Havre Elementary District and for the Havre High School District to send out a  
7 second bus to pick up high school students within its transportation service area. Under 20-10-  
8 122, MCA Havre High School could still pick up elementary students who reside in the  
9 Cottonwood and Davey Districts and transport them to Havre to attend elementary school. The  
10 result would be exactly the same. This is obviously not a cost effective or expedient way for the  
11 Havre districts to provide transportation services to students attending their schools.

12 Cottonwood also alleges that this issue is similar to a busing issue between the North Star  
13 district and the Chester-Joplin-Inverness (CJI) District. Both of these districts serve students in  
14 grades K-12. In this situation, North Star obtained approval from the *Hill County Transportation*  
15 *Committee* to extend two bus routes into the *CJI transportation service area* without an  
16 agreement with CJI approving the extension. North Star's transportation service area ends at the  
17 boundary with CJI. Therefore the North Star bus was not operating within its transportation  
18 service area when it entered CJI and picked up students who are residents of the CJI district. The  
19 Hill County Transportation Committee did not have the authority to approve the extension of  
20 these routes.

21 Again, a transportation committee does not have authority to extend a route into a  
22 neighboring transportation service area without written permission from that district.

23 In this case the Havre High School District is operating within its own transportation  
24 service area and therefore no agreements with Cottonwood and Davey are required.

25 Furthermore, it is important to note that 20-10-101, MCA defines "transportation service  
area" as "the geographic area of responsibility for school bus transportation for each district that



operates a school bus transportation program." Davey does not operate a school bus transportation program and therefore has no transportation service area.

DATED this 2nd day of June, 2006.

/s/ Linda McCulloch  
Linda McCulloch  
Superintendent of Public Instruction

### **CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on this 2<sup>nd</sup> day of June, 2006 , I caused a true and exact copy of the foregoing NOTICE AND BRIEFING SCHEDULE to be mailed, postage prepaid, to the following:

**Board of Trustees  
Cottonwood School District #57  
37596 Hi-Line Loop  
Havre MT 59501**

**Board of Trustees  
Davey School district #12  
PO Box 1829  
Havre MT 59501**

**Ms Denise Thompson Chairperson  
Havre District 16/A Board of Trustees  
PO Box 7791  
Havre MT 59501**

**Hill County Transportation Committee  
315 4<sup>th</sup> Street  
Havre MT 59501**

**Garry Pace Acting Chair  
Hill County Transportation Committee  
PO Box H  
Boulder MT 59632**

/s/ Catherine K. Warhank  
CATHERINE K. WARHANK  
Chief Legal Counsel